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8 COUNTY OF LOS ANGELES (erroneously sued as "Los Angeles County")
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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JOSEPH ANDREW PEREZ,
15 Plaintiff,
16 vs.
17 COUNTY OF LOS ANGELES,
18 Defendants.
19

20 Case No.: 2:22-cv-08643-ODW-PLA
21 Assigned to the Honorable: Otis D.
22 Wright II

23
24 **DEFENDANT COUNTY OF LOS
25 ANGELES' NOTICE OF MOTION
26 AND MOTION TO DISMISS
27 PLAINTIFF'S COMPLAINT
PURSUANT TO RULE 12(B)(6);
MEMORANDUM OF POINTS AND
AUTHORITIES**

28
29 *[Filed concurrently with and (Proposed)
30 Order]*

31 Date: January 23, 2023

32 Time: 1:30 pm

33 Dept: 5D

34 Complaint Filed: June 13, 2022

35 Amendment Filed: October 5, 2022

36 POS Filed: October 31, 2022

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 23, 2023, at 1:30 pm in Courtroom
3 5B of the United States District Court, Central District of California, located at 350
4 W. First Street, Los Angeles, CA 90012, Defendant, COUNTY OF LOS ANGELES
5 (erroneously sued as “Los Angeles County”) (hereinafter referred to as “Defendant”
6 or the “County”) will, and hereby do, move this Court for an order to dismiss, with
7 prejudice, against Plaintiff, Joseph Andrew Perez’s (“Plaintiff”) complaint, in its
8 entirety, pursuant to *Federal Rules of Civil Procedure*, Rule 12(b)(6) and
9 corresponding law.

10 The County’s Motion is brought on the following grounds: Plaintiff’s cause of
11 action against the County fails to state claim upon which relief can be granted against
12 these individual defendants.

13 Although Plaintiff appears to be incarcerated based on the information
14 contained within the pleadings, Defendant has complied with Central District Local
15 Rule 7-3, prior to bringing forth the instant motion. On November 28, 2022, Defense
16 Counsel mailed a formal correspondence/letter to Plaintiff and his Guardian Ad Litem
17 (GAL) setting forth the basis for the County’s anticipated Motion to Dismiss.

18 Essentially, Defense Counsel informed Plaintiff that his action failed to state
19 any claim for relief against the County and that the action could not be maintained by
20 a GAL. To date, Plaintiff, or his state appointed Guardian Ad Litem, has not
21 responded to Defense Counsel’s meet and confer correspondence. Accordingly, the
22 County must now proceed with this formal motion to preserve its rights.

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1 The County's Motion to Dismiss is based on this notice, the court file, the
2 attached memorandum of points and authorities, and any other matter the Court may
3 judicially notice at the time for hearing and/or oral arguments.

4

5 DATED: December 22, 2022

6

7

8 **PETERSON, BRADFORD,
9 BURKWITZ, GREGORIO,
10 BURKWITZ & SU**

11

12 By: David B. Zeetser
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17 COUNTY OF LOS ANGELES

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19	<i>Sprewell v. Golden State Warriors,</i>	
20	266 F.3d 979, 988 (9th Cir. 2001)	7
21	<i>Teter v. City of Newport Beach,</i>	
22	30 Cal.4th 446, 451-454 (2003).....	10
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1 **Statutes**

2 42 U.S.C. § 1983.....4, 8, 9

3 *California Government Code* § 844.610

4 Gov. Code, §§ 911.2(a).....11

5 **Rules**

6 *Federal Rules of Civil Procedure*, Rule 12(b)(6)2, 7

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 13, 2022, Plaintiff Joseph Andrew Perez (hereinafter “Plaintiff”), in pro per, filed his initial Complaint in this action against several Defendants presumably asserting various allegations of wrongdoing in violations of 42 U.S.C. § 1983 in connection with his arrest and/or incarceration involving Defendant County of Los Angeles (“Defendant” or the “County”). However, the Complaint fails to specifically delineate any specific claims for relief against any particular defendant and it is unclear what claims are brought specifically against the County.

Nonetheless, the *factual* allegations set forth within the complaint merely describe a dissatisfaction with the care and treatment provided to Plaintiff, following a lawful arrest pursuant to probable cause, and is insufficient to support any 1983 claims against Defendant and/or any cognizable constitutional violation of Plaintiff rights.

Furthermore, the County cannot be held liable for 1983 claims based on a theory of respondeat superior, and there are no alleged policies, customs, or practices that can support a Monell theory of liability in this action. Also, it should be noted that to the extent any state law claims are pled against the County, such claims are barred by the relevant governmental immunity.

Additionally, and more importantly, on October 5, 2022, Plaintiff also filed an Application and Order for Appointment of Guardian Ad Litem (GAL), for Vanessa Perez (i.e., Mother), which was granted by the Superior Court. (See Dkt. 1-5.) The granting of the GAL petition serves as a bar to this action, as a GAL may not act as counsel for a pro se litigant.

In sum, Plaintiff's Complaint fails to state any claim for relief against the County and the action should be dismissed.

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II. FACTUAL ALLEGATIONS

The factual allegations set forth in Plaintiff's Complaint are essentially as follows:

- On July 25, 2020, Plaintiff alleges that while suffering from a mental crisis, he was arrested in public, where he remained under observation, in custody for 24 hours, until he was released the next evening. (*See* Plaintiff's Complaint Dkt. 1-1, at 4:12-13)
- During this time, it is further alleged that Plaintiff's mother, Vanessa Perez, unaware of her son's whereabouts called the LASD, who indeed affirmed Plaintiff was in custody. Ms. Perez then informed LASD that Plaintiff had suffered from mental illness and requested that he be placed on 5150, however, Deputy Philips denied her request. (*Id.* at 4:13-18)
- On July 26, 2020, Plaintiff alleges that after he was released from custody, still suffering, as he continued to hear voices, talk to himself, and cried. (*Id.* at 4:21)
- Plaintiff alleges that at approximately 2:00 a.m., he entered a neighbor's unlocked car, and while seated inside, he continued to cry and speak to voices loudly; in addition, he was honking his horn loudly for 30 minutes. (*Id.* at 4:20-28)
- Plaintiff further alleges that a 'neighbor' went to see the commotion and managed to de-escalate the situation by speaking with Plaintiff and thereafter, exited the vehicle and sat on the curb expressing frustrations to her. (*Id.*)
- Plaintiff alleges that while he was seated on the curb, LASD arrived, charged him, and aggressively attacked plaintiff, taking turns switching positions punching, kicking, and kneeing him in the face, head and body repeatedly. (*Id.* at 5:1-7)
- Once in custody, Plaintiff alleges that he was denied proper medical care at

1 the scene, had to wear a spit mask throughout his stay at the hospital, and
 2 denied proper treatment and testing as he did not receive CAT/MRI scan.
 3 Moreover, Plaintiff alleges that Defendants falsified reports and tainted
 4 evidence by placing items on Plaintiff's person. (*Id.* at 5:8-21)

5 • On or around August 25, 2020, Plaintiff was incarcerated at TTCF, and
 6 after two months, he further alleges to have developed a rash as a result of
 7 being placed in solitary confinement.

8 Based on these allegations, Plaintiff generally concludes that LASD arrested
 9 him for no apparent reasons, and subsequently, refused medical care and/or delayed
 10 treatment despite being informed that he suffered from some pre-existing condition.
 11 Nonetheless, Plaintiff fails to allege any specific policies, customs, or practices of
 12 Defendants that have caused their harm, which is insufficient to state a claim for relief.

13 Moreover, Plaintiff improperly plead constitutional violations against
 14 individual Defendants and the County. Essentially, Plaintiff alleges claims for relief,
 15 but does not provide any factual background to establish any of their claims as to the
 16 County, only conclusory allegations, which fails to provide Defendants with the
 17 requisite notice of the claims against it.

18 **III. LEGAL STANDARD**

19 Under Rule 8, a plaintiff must plead a short and plain statement of the claim
 20 showing that the pleader is entitled to relief in order to give the defendant fair notice
 21 of the claim and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S.
 22 544, 555 (2007). Factual allegations "must be enough to raise a right to relief above
 23 the speculative level on the assumption that all the allegations in the complaint are
 24 true." *Id.* at 555–56. Rule 8 "demands more than an unadorned, the-defendant-
 25 unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
 26 (citing *Twombly*, 550 U.S. at 555). A complaint that simply offers "labels and
 27 conclusions," "a formulaic recitation of the elements of a cause of action," or "naked
 28 assertions devoid of further factual enhancement" will not do. *Id.* at 678 (internal

1 citations, quotations, and alterations omitted).

2 *Federal Rule of Civil Procedure 12(b)(6)* provides that a party may move to
 3 dismiss a claim for relief for its failure to state a claim upon which relief can be
 4 granted. “To survive a motion to dismiss, the factual allegations in a complaint “must
 5 be enough to raise a right of relief above the speculative level.” *Bell Atlantic Corp.*
 6 *v. Twombly*, 550 U.S. 544, 555 (2007). Further, the court is “not required to accept
 7 as true conclusory, unwarranted deductions of fact or unreasonable inferences.”
 8 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

9 A court may properly dismiss a complaint under Federal Rule of Civil
 10 Procedure 12(b)(6) when the complaint “either (1) lacks a cognizable legal theory or
 11 (2) fails to allege sufficient facts to support a cognizable legal theory.” *Somers v.*
 12 *Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). In evaluating the plausibility of the
 13 complaint, a court must disregard legal conclusions disguised as factual allegations.
 14 *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). A plaintiff must do more than merely
 15 offer “labels and conclusions, and a formulaic recitation of the elements of a cause of
 16 action will not do.” *Twombly*, 550 U.S. at 555. Indeed, a Plaintiff is not “entitled to
 17 the assumption of truth” on his pleadings, where his allegations “are no more than
 18 conclusions.” *Iqbal*, 556 U.S. at 679. As such, a court reviewing a motion to dismiss
 19 need not adopt “[t]hreadbare recitals of the elements of a cause of action, supported
 20 by mere conclusory statements” *Id.* at 678.

21 Here, as set forth more below, the *factual* allegations contained within
 22 Plaintiff’s complaint are insufficient to support his claims for relief against the
 23 Defendants and should be dismissed.

24 **IV. PLAINTIFF’S ACTION MUST BE DISMISSED AS A PRO SE**
 25 **LITIGANT CANNOT BE REPRESENTED BY A GUARDIAN AD LITEM**

26 A non-party appointed as guardian ad litem cannot act in pro per and a
 27 guardian (or parent) cannot bring a lawsuit on behalf of a minor (dependent) in
 28 federal court without retaining a lawyer. *Johns v. Cnty. of San Diego*, 114 F.3d

1 874, 876–77 (9th Cir. 1997); *Osei-Afriyie v. Medical College*, 937 F.2d 876, 882–83
 2 (3d Cir.1991); *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61–
 3 62 (2d Cir.1990); *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir.1986)(per
 4 curiam).

5 Here, as there is no counsel of record, this action must be dismissed as
 6 Plaintiff is attempting to be represented by a GAL. (See Dkt. 1-4.) Additionally, it
 7 should be noted that as the guardian ad litem for Plaintiff, Ms. Perez is not a party to
 8 the action and cannot act in pro per.

9 **V. PLAINTIFF'S CLAIMS FOR RELIEF FOR VIOLATION OF HIS**
 10 **CIVIL RIGHTS PURSUANT TO §1983 FAIL TO STATE A CLAIM AS**
 11 **PLAINTIFF FAILS TO ASSERT ANY DEPRIVATION OF A**
 12 **CONSTITUTIONAL RIGHT, PLAINTIFF FAILS TO SHOW DELIBERATE**
 13 **INDIFFERENCE AGAINST ANY INDIVIDUAL DEFENDANT, AND**
 14 **LIABILITY AGAINST A PUBLIC ENTITY CANNOT BE PREDICATED**
 15 **ON A THEORY OF RESPONDEAT SUPERIOR.**

16 A public entity cannot be held liable based on vicarious liability for the alleged
 17 wrongdoings of its employees for causes of action brought pursuant to 42 U.S.C. §
 18 1983. (*Monell v. Department of Social Services*, 436 U.S. 658, 690-691 (1978); *see*
 19 *also, City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989) [holding that it is only
 20 when the execution of the government's policy or custom inflicts the injury that the
 21 municipality may be held liable under § 1983].) Accordingly, there is no respondeat
 22 superior liability for constitutional claims against a municipality. (Id.)

23 Here, Plaintiff's complaint appears to be predicated upon violations of 42
 24 U.S.C. § 1983. Accordingly, Plaintiff may not rely upon the actions of the County's
 25 employees to state a viable cause of action for § 1983. Instead, Plaintiff must plead
 26 that there is an existing unconstitutional municipal policy and a causal connection
 27 between the unconstitutional policy and the alleged constitutional deprivation in order
 28 for a public entity to be exposed to liability. (*See, City of Oklahoma City v. Tuttle*, 471

1 U.S. 808 (1985), reh'g denied (1985) 473 U.S. 925; *Los Angeles Police Protective*
 2 *League v. Gates*, 907 F. 2d 879, 890 (9th Cir. 1990).) Liability does not attach to a
 3 municipality merely because a constitutional violation is caused by a municipal
 4 employee, even one acting within the scope of his or her authority. (*Monell, supra*,
 5 436 U.S. at 663.) “Instead, in *Monell* and subsequent cases, we have required a
 6 Plaintiff seeking to impose liability on a municipality under section 1983 to identify
 7 a municipal ‘policy’ or ‘custom’ that caused Plaintiff’s injury.” (*Board of County*
 8 *Commissioners v. Brown*, 520 US 397, 403 (1997).) “That a Plaintiff has suffered a
 9 deprivation of federal rights at the hands of a municipal employee will not alone
 10 permit an inference of municipal culpability and causation; the Plaintiff will simply
 11 have shown that the employee acted culpably.” (Id. at 406.) Moreover, “an isolated
 12 incident caused by simple negligence” does not give rise to liability under §1983.
 13 (*Erdman v. Cochise County*, 926 F.2d 877, 882 (9th Cir.1991).)

14 Here, Plaintiff has failed to allege any policy, custom, or practice that caused
 15 their injuries. Instead, Plaintiff conclusory alleges that LASD deputies performed an
 16 arrest in public pursuant to probable cause. These allegations, taken alone, preclude
 17 any municipality or public entity liability as 1983 claims against the County cannot
 18 be based on vicarious liability. (*Monell, supra*, 436 U.S. at 663.) As a result, Plaintiffs’
 19 claims against the County must be dismissed.

20 Additionally, Plaintiffs remaining conclusory allegations would not support
 21 any basis for relief against the County. In fact, Plaintiff was arrested for burglary, and
 22 resisted, which led to him being Tased. Moreover, what is not alleged is that Plaintiff
 23 was minimally cooperative at the Hospital, and the root cause for his inability to
 24 receive adequate care and treatment that was only attempted to be offered.

25 In sum, Plaintiffs have not alleged any purported wrongdoing on behalf of the
 26 County and the complaint dismissed in its entirety.

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1 **VI. ANY STATE LAW CLAIM AGAINST THE COUNTY IS BARRED BY**
 2 **CALIFORNIA GOVERNMENT IMMUNITIES**

3 *California Government Code* § 844.6 govern provides that “a public entity is
 4 not liable for . . . [a]n injury to any prisoner” except as provided in specific enumerated
 5 sections. California courts have accordingly denied claims made by pretrial detainees
 6 seeking redress for their conditions of confinement on the basis that the County was
 7 immune to claims made by prisoners. See, e.g., *Sahley v. San Diego County*, 138 Cal.
 8 Rptr. 34, 69 (1977) (where pre-conviction detainee had been booked and arraigned
 9 and was awaiting trial, he was a “prisoner,” and was therefore not entitled to recover
 10 from County for injuries suffered when he slipped and fell in the shower at the County
 11 jail). . .” A person under arrest becomes a “prisoner” upon their initial entry into a law
 12 enforcement facility for booking. Cal. *Govt. Code* §§ 844, 844.6; *see Teter v. City of*
 13 *Newport Beach*, 30 Cal.4th 446, 451-454 (2003) —person arrested and jailed for
 14 public intoxication was “prisoner” even though subsequently released without
 15 charges.

16 Furthermore, it is irrelevant what claims Plaintiff has attempted to advance in
 17 this action. *Government Claims Act* immunities has repeatedly been held to apply to
 18 any alleged constitutional violation. See *Jacob B. v. County of Shasta*, 40 Cal.4th 948,
 19 961 (2007) [holding that a cause of action based on Article I, section 1’s right to
 20 privacy is subject to the litigation privilege]; *Nasrawi v. Buck Consultants LLC*, 231
 21 Cal.App.4th 328, 341-342 (2014) holds that where a provision of the state constitution
 22 imposes a duty on a public entity, that duty is subject to *Government Claims Act*
 23 immunities (e.g., GC 820.2); *Krolkowski v. San Diego City Employees’ Retirement*
 24 *System*, 24 Cal.App.5th 537, 556-57 (2018)— Agreeing with *Nasrawi*, *Richardson-*
 25 *Tunnell v. Schools Ins. Program for Employees* (157 Cal.App.4th 1056, 1066, (2007)
 26 disapproved on other grounds in *Quigley v. Garden Valley Fire Protection Dist.*
 27 (2019) 7 Cal. 5th 798 — statutory immunities apply to cause of action for damages
 28 based on constitutional right to privacy.

1 Additionally, no claim for damages may be brought against the County unless
2 there is timely compliance with the Government Claims Act, which also must be set
3 forth in the operative pleading. Gov. Code, §§ 911.2(a), 912.4, 945.4; *Bahten v.*
4 *County of Merced*, 59 Cal. App. 3d 101 (1976)); *City of Stockton v. Superior Court*,
5 42 Cal.4th 730,737-38 (2007)

6 In sum, Defendant County is statutorily immune to all state law claims brought
7 by Plaintiff (aside from a potential claim under §845.6), pursuant to *California*
8 *Government Code* § 844.6. Further, there is no evidence that Plaintiff timely complied
9 with the government claims act. Accordingly, Plaintiff's complaint should be
10 dismissed, with prejudice, as to the County.

VII. CONCLUSION

12 Based on the foregoing, Defendant respectfully request this Court to dismiss
13 Plaintiff's entire action as he has failed to allege sufficient facts to support any
14 potential claim for relief.

DATED: December 22, 2022

**PETERSON, BRADFORD,
BURKWITZ, GREGORIO,
BURKWITZ & SU**

By: David B. Zeetser
Avi Burkowitz, Esq.
Gil Y. Burkowitz, Esq.
David B. Zeetser, Esq.
Defendant,
COUNTY OF LOS ANGELES

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 North First Street, Suite 300, Burbank, California 91502.

On December 22, 2022, I served the foregoing document described as:
**DEFENDANT COUNTY OF LOS ANGELES' NOTICE OF MOTION AND
MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO
RULE 12(B)(6); MEMORANDUM OF POINTS AND AUTHORITIES** on
interested parties in this action by placing a true and correct copy thereof enclosed
in a sealed envelope addressed as follows:

SEE ATTACHED MAILING LIST

- BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed document(s) with the Clerk of the Court by using the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system. Participants in this case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.
- BY MAIL:** I deposited such envelope in the mail at Burbank, California. The envelope was mailed with postage thereon fully prepaid. As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Burbank, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY ELECTRONIC MAIL:** I served the enclosed via e-mail transmission to each of the parties listed on the attached service list with an email address.
- FEDERAL:** I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on December 22, 2020, at Burbank, California.

Executed on December 22, 2022, at Burbank, California.

Jackie Landaverde

Jacqueline Landaverde

1 **SERVICE LIST**

2 **RE: Perez, Joseph Andrew v. County of Los Angeles, et al.**

3 **Case No.: 2:22-cv-08643-ODW-PLA**

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6 Joseph Andrew Perez
7 Inmate No. 5998967
8 Terminal Annex
9 P.O. Box 86164
10 Los Angeles CA, 90086
11 **Plaintiff,**
12 **PRO SE LITIGANT**

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16 Vanessa Perez
17 Guardian Ad Litem
18 3716 Colorado St., West Covina
19 CA 91792
20 T: 626-759-5709
21 F: TBD

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28 **Guardian Ad Litem for Plaintiff,**
17 **PRO SE LITIGANT**

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